

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 31 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Closed Captioning and Video)	
Description of Video Programming)	MM Docket No. 95-176
)	
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

REPLY COMMENTS OF
INTERNATIONAL CABLE CHANNELS PARTNERSHIP, LTD.

International Cable Channels Partnership, Ltd. ("ICCP"), which owns and operates the International Channel foreign-language programming service, submits these Reply Comments in response to the initial comments in this proceeding. Entities providing captioning services and foreign-language programmers conclusively establish that foreign-language programming should be exempt from mandatory captioning because of the "complexity of adding the captions" and undue "economic burden" of captioning foreign language programming.

I. Captioning Providers Uniformly Agree That Foreign-Language
Captioning Expertise Does Not Exist.

As the Commission found in the Notice of Inquiry proceeding, "expertise in non-English language captioning may be scarce and, for some languages, virtually unavailable."

No. of Copies rec'd 0211
List ABCDE

Video Programming Accessibility, Report, MM Docket No. 95-176, FCC 96-318 (rel. July 29, 1996) ("Notice of Inquiry"), at ¶80. Closed-captioning providers have confirmed that, as a practical matter, there presently are no closed-captioning resources for foreign-language programming. Consequently, all captioning commenters suggest that the Commission exempt foreign-language programming from mandatory captioning or defer any mandatory captioning requirements.

The captioning providers detail the absence of foreign-language captioning expertise and provide a compelling record to support a categorical exemption from mandatory captioning for foreign-language programming services such as the International Channel:

Only twice in ten years has the issue of captioning in a foreign language come up. I do have a captioner fluent in Spanish, and at the time of the second request I did have software capable of captioning in that language. However, this was to be very labor intensive, and thus not cost effective for the producer. Foreign language productions should be exempt from mandatory captioning.

Comments of CAPTIVISION at 6.

MCS does not believe mandatory captioning requirements should be implemented during the eight-year transition period for foreign language captioning. From our perspective, there are not, at this time, sufficient captioning personnel trained in non-English language stenographic skills who could provide realtime captioning.

Comments of Media Captioning Services at 17.

Where there is a shortage of qualified stenocaptioners for English-language realtime captioning, there is an absolute vacuum of stenocaptioners capable of live captioning in other languages. In addition, there is no solid, conflict-free, Spanish-to-Spanish stenotype theory, although a new theory is now being tested. It may be physically impossible to train students to write conflict-free Spanish at 200 words per minute, the speed of an average American newscast. A consultant with Stenograph -- the world's largest maker of hardware and software products for

court reporters -- has told VITAC that a project to train qualified Spanish-to-Spanish stenocaptioners is still a couple of years away, though a similar project for Portuguese has progressed well. This consultant says that current efforts at Spanish-language realtime have yielded extremely high (greater than 10%) error rates. Also, there are hardly any schools teaching Spanish stenotypy.

Comments of VITAC at 6-7 (emphasis added)¹; see Comments of the National Captioning Institute at 10 (exemptions appropriate where "it 'makes no sense' to caption (such as programs which either cannot be captioned, due to certain foreign language restrictions...)").

Spanish language programmers explain the technical difficulties they face in close captioning programming services, despite the fact that Spanish uses a Latin-based alphabet. See, e.g., Comments of Univision Communications Inc. ("Univision Comments") at 4. "Spanish speaking programming does not enjoy a captioning market nearly as developed as that of English language television." Comments of Telemundo Group, Inc. ("Telemundo Comments") at 5; see Comments of CBS Inc. ("CBS Comments") at 15 ("[c]aptioning of foreign language programming is now in its earliest phases of development, and the twin obstacles of cost and scarcity are even more pronounced"). Technological adaptations are necessary before current closed captioning equipment can be used to caption Spanish-language programming. Univision Comments at 4. Where such mono-lingual foreign-language services encounter difficult technical issues in captioning their programming, the International Channel faces virtually insurmountable technical problems in close captioning its service in 28 different Asian, European and Middle Eastern languages with over 60 percent of its programming in non-Latin

¹ VITAC explains that one company may have a "small number of Spanish-language stenocaptioners," but it "know[s] of no stenocaptioners capable of realtime writing in any other language." VITAC Comments at 8. However, VITAC appears to suggest that there may be capability for off-line captioning in Spanish and other unspecified languages using the Latin alphabet. Id.

alphabets which captioning technology cannot process and television sets cannot decode. There is often little or no delay between the time that ICCP downlinks a signal and then reuplinks that programming on the International Channel which makes these closed captioning problems insoluble.

II. Mandatory Closed Captioning Would Place Undue Economic Burden Upon Niche Foreign-Language Programmers.

The Commission has recognized that the cost of captioning foreign-language programming is likely to be "significantly higher than English language captioning." Notice of Inquiry at ¶80. Moreover, as ICCP demonstrated in its initial comments at 6-7, foreign-language programming services such as the International Channel are least able to carry that heavier burden. By definition, such services have smaller potential niche audiences with correspondingly limited advertising revenues and programming budgets. The economic burden of captioning is further exacerbated by the limited "shelf-life" of much of the International Channels' programming, including news, current events, and holiday specials, which precludes the spreading of captioning costs over multiple showings.

Although Spanish-language programming is the most widely distributed foreign-language programming in the United States, Spanish-language programmers uniformly confirm the substantially higher cost of Spanish-language captioning. See Telemundo Comments at 6, Univision Comments at 4; Comments of Grupo Televisa, S.A. ("Grupo Televisa Comments") at 8-9; CBS Comments at 8-9. Notwithstanding the larger Spanish-speaking population in the United States, these programmers make a compelling argument that mandatory captioning would impose an undue economic burden because they serve a smaller potential niche audience and therefore generate lower advertising revenues. Telemundo Comments at 2, 6. Again, their

smaller programming budgets² would be less able to support the high cost of foreign-language closed captioning. Univision Comments at 5. To the extent that topical programming has minimal repeat value, "the recovery of captioning costs [becomes] even more difficult." Telemundo Comments at 6. Mandatory closed captioning, therefore, would hamper the ability of these programmers to provide diverse programming to the Hispanic community.

Because ICCP programs the International Channel for even smaller niche audiences, the economic burden of closed captioning would be significantly greater. Unlike Spanish-language programmers, ICCP seeks to serve many smaller ethnic and linguistic communities. Consequently, its programming has more limited audience appeal than Spanish-language programming. For example, 7.5% of the current U.S. population or over 17 million persons are Spanish-speaking. See Grupo Televisa Comments at 8. In contrast, persons speaking the most popular language carried on the International Channel -- French -- equal only about 10% of the Spanish-speaking population and comprise less than 1% of the total United States population. See Exhibit 1. Indeed, when the persons in the United States speaking each of the twenty-eight languages on the International Channel are aggregated, they total less than 13.4 million or 5.4% of the total United States population. Id. When the International Channel's limited distribution of 7.4 million subscribers and the ratings for an individual program are coupled with the Commission's estimate that ten percent of the total U.S. population has a hearing disability, it is apparent that the number of hearing impaired persons potentially

² Such foreign-language services, like the International Channel, obtain a significant portion of their programming without charge or on a barter basis from foreign programmers. The Spanish-language programmers confirmed that much of their programming is produced outside the United States, where programming budgets are even smaller and foreign programming producers lack the equipment, expertise, and access to financial resources necessary for captioning. Grupo Televisa Comments at 4.

watching a foreign language program on the International Channel is de minimis. When weighed against that potential benefit, the costs of close captioning foreign language programming are prohibitive.

III. Unique Moral Rights Issues Further Increase The Burden Of Close Captioning Foreign Language Programming.

As ICCP explained in its initial comments at 8-9, the captioning of foreign-language programming may violate the "moral rights" of foreign producers and creators where such rights have been reserved contractually or where the rights are granted automatically by a particular country's copyright laws. Even if such foreign-law issues eventually could be resolved, the legal costs associated with attempting to define and limit moral rights would be prohibitive. Thus, these complicated issues of foreign law provide a separate and independent ground for categorically exempting foreign-language programming services from mandatory captioning.

Conclusion

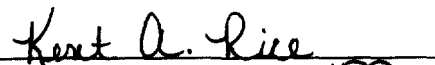
Captioning providers have confirmed conclusively that there is no foreign language captioning expertise to support the mandatory captioning of foreign language programming. The compelling presentation of undue economic burden by Spanish-language programmers only highlights the much more severe technical and economic problems faced by a niche foreign language programming service such as the International Channel. Because captioning multiple languages from foreign sources is technically impractical and economically burdensome, ICCP respectfully requests that the Commission categorically exempt from

mandatory closed captioning foreign-language programming services, i.e. those services for which at least 75 percent of all programming is aired in a foreign language.

March 31, 1997

Respectfully submitted,

INTERNATIONAL CABLE
CHANNELS PARTNERSHIP, LTD.

By: Kent A. Rice 
Kent A. Rice

President & Chief Operating Officer

Douglas Coblens

Senior Counsel

5445 DTC Parkway, Suite 600

Englewood, Colorado 80111

**Persons in the United States Speaking
Foreign Languages Programmed on the International Channel**

Arabic	356,539
Armenian	149,694
Asian Indian	555,106
Cambodian	125,352
Chinese	1,317,355
Czech	92,485
Danish	198,722
Dutch	142,884
Farsi	201,865
Filipino	834,931
French	1,929,932
German	1,547,495
Greek	388,214
Hmong	90,082
Hungarian	161,776
Italian	1,308,573
Japanese	433,934
Korean	637,713
Malayalam	33,949
Norwegian	198,722
Polish	723,548
Portuguese	430,553
Romanian	235,741
Russian	241,694
Slovenian	80,388
Swedish	198,722
Thai	232,896
Vietnamese	502,429

The foregoing population figures are based upon 1990 Census Data.